

DECISION

THE COMPTROLLER
OF THE UNITED STATES
WASHINGTON, D. C.

GENERAL INVESTIGATIVE
DIVISION
20548

J. Bradford
Pl. 11-1
7870

FILE: B-191228

DATE: September 29, 1978

MATTER OF: Dale W. Sherfey - Travel and Transportation Expenses

DIGEST: Employee appeals disallowance by our Claims Division of travel and transportation expenses incurred incident to a transfer requested by him. He is not entitled to reimbursement. Agency, acting within its authority, determined that transfer was for convenience and benefit of employee and our Office is bound by such determination in absence of a showing that it was arbitrary or capricious.

This action is in response to a request for reconsideration of Settlement Certificate No. Z-2621781, November 11, 1977, by which our Claims Division disallowed Mr. Dale W. Sherfey's claim for travel and transportation expenses he incurred incident to his transfer from the Naval Air Station, San Diego, California, to the Department of the Army, Fort Carson, Colorado, in August of 1975.

The record shows that Mr. Sherfey, an Aircraft Engine Mechanic at the Naval Air Station, was seeking employment in the Colorado area. He was offered a similar position at the same grade at Fort Carson in response to inquiries he made there. The Civilian Personnel Officer at Fort Carson states that it had been determined before Mr. Sherfey's transfer that he would not be reimbursed for the expenses of the move. As a result of this determination, travel orders were not issued. Both the Civilian Personnel Officer and Mr. Sherfey state that he was informed on at least three occasions that his transfer was not authorized at Government expense.

Section 5724(a) of title 5, United States Code, provides for payment of travel and transportation expenses when the employee's transfer is in the interest of the Government. Paragraph C4100-7 of the Joint Travel Regulations (JTR), implementing that statute, provides in pertinent part as follows:

- "1. * * * A permanent change-of-station movement will not be authorized at

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Government expense when it is primarily for the benefit of the employee or at his request. If the movement is determined not to be in the interest of the Government, the employee will be informed prior to the movement as to his responsibility for payment of travel and transportation expenses."

Our Claims Division denied Mr. Sherfey's claim on the grounds that his transfer was at his request and primarily for his convenience and benefit, rather than in the interest of the Government. Mr. Sherfey argues that if an applicant is selected for employment, his change of permanent duty station is in the interest of the Government. He claims that his own situation is governed by paragraph C4100-2.6, Vol. II of the JTR which provides:

"* * * The following movements are considered to be in the interest of the Government:

* * * * *

- "6. for reassignment of a qualified employee to an activity where his services are needed including those cases in which the employee initiates the request for movement but such request is not necessarily the deciding factor."

Paragraph C4100-1 of the JTR precludes the payment of travel and transportation expenses when the change of official station is not in the interest of the Government but is primarily for the convenience or benefit of the employee. It is within the discretion of the employing agency to determine in any given case whether a transfer is in the interest of the Government or for the convenience or benefit of the employee. See Bernard K. Fernald, B-189201, July 25, 1977, and cases cited therein. In our decision, B-185077, May 27, 1975, we set forth three rules with regard to such determinations:

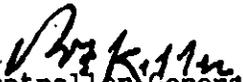
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"17 If an employee has taken the initiative in obtaining a transfer in another location, an agency usually considers such transfer as being made for the convenience of the employee or at his request, 27 whereas, if the agency recruits or requests an employee to transfer to a different location it will regard such transfer as being in the interest of the Government. 37 Of course, if an agency orders the transfer and the employee has no discretion in the matter, the employee is entitled to reimbursement of moving expenses."

An administrative determination made by an agency in the course of performing its official functions will not be overturned by this Office, in the absence of a showing that such determination was arbitrary or capricious. B-166930, July 22, 1969. There is nothing in the record of this case which would cause us to question the Army's determination. Furthermore, the Army complied with the governing regulations, informing Mr. Sherfey before his transfer that he would be responsible for the expenses of his move.

Finally, Mr. Sherfey's situation does not fall within 2 JTR paragraph C4100-2.6, as he claims, because that paragraph concerns "reassigned" employees. Paragraph 210-2(21) of the Federal Personnel Manual (FPM) defines reassignment as "a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion." Mr. Sherfey's movement was a transfer, defined in FPM paragraph 210-2(27) as "a change of an employee, without a break in service of one full workday, from a position in one agency to a position in another agency."

Accordingly, we must sustain the settlement certificate issued by our Claims Division disallowing Mr. Sherfey's claim.


Acting Comptroller General
of the United States